UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

IN RE:	)	Case No. 19-MD-2875-RBK-JS
	)	
VALSARTAN PRODUCTS LIABILITY LITIGATION	)	
	)	
	)	Camden, NJ
	)	September 25, 2019
----------	)	10:10 a.m.

TRANSCRIPT OF STATUS CONFERENCE
BEFORE THE HONORABLE JOEL SCHNEIDER
UNITED STATES MAGISTRATE JUDGE

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I N D E X

(The following was heard in open court at 10:08 a.m.)

THE COURT: Please be seated. Welcome back to Camden. We're on the record in In Re: Valsartan MDL, Docket Number 19-MD-2875. For the record, why don't we just get the entries of appearance for the leadership team and anyone else who's going to talk today. Just we don't have a court reporter here, just state your name before you talk so the court reporter knows who's talking.

MR. NIGH: Good morning, Your Honor, Daniel Nigh for the plaintiffs.

MR. SLATER: Good morning, Your Honor, Adam Slater for the plaintiffs.

MR. HONIK: Good morning, Your Honor, Ruben Honik. I'm also here with David Stanoch, who's likely to speak from my office.

MS. WHITELY: Good morning, Your Honor, Conlee Whitely on behalf of plaintiffs.

MR. GOLDBERG: Seth Goldberg on behalf of the Prinston defendants and the defense group.

MR. TRISCHLER: Good morning, Your Honor, Clem Trischler on behalf of Mylan Pharmaceuticals and the defense group.

MS. COHEN: Good morning, Your Honor, Lori Cohen on behalf of the defense group as well as the Teva defendants.

THE COURT: So just so you know, Judge Kugler is on

trial, a criminal case, and he said he's going to stop his case at 2:00 so we'll meet with Judge Kugler at 2:00 rather than just sometimes I know we continue the proceeding if it's not too long, but since he's in trial, we'll have to get together at 2:00 after we adjourn today's proceeding. I don't -- usually I start this by going over miscellaneous issues -- I really don't have any miscellaneous issues to address. I think I'm up to date on what's going on.

So unless you disagree, why don't we just get right into the agenda and deal with the issues that the parties have raised, if that's okay with the parties. I have all your papers and I'm prepared to talk about them. The first matter on the agenda is plaintiff fact sheets. Are we finished?

MS. COHEN: No, Your Honor. Lori Cohen. I'm happy to again -- can we give an update --

THE COURT: Sure.

MS. COHEN: -- on where we stand right now? We're getting closer, but we're not there yet.

THE COURT: I thought we resolved everything at the last hearing.

MS. COHEN: Yes, so did we. So let's -- so here's where -- where I understand we're at, and I just talked to Mr. Slater as well. The personal injury -- excuse my voice, I somehow lost it last night, but personal injury is actually -- we have agreed to. That is finished. Mr. Slater last night --

THE COURT: I'm sorry, that's the one I meant.

MS. COHEN: Yeah.

THE COURT: I wanted to start with that one.

MS. COHEN: Yes. So --

THE COURT: What's the consensus of the -- both sides about whether we should enter that right away, get the trigger going, or should we have them all entered at the same time?

MS. COHEN: Yes, we --

UNIDENTIFIED DEFENSE COUNSEL: Same time.

MS. COHEN: Yes, yes to number one, Your Honor. We think that we should get going on the first one. There's no reason to hold back. We have sent counsel last night an -- an order -- an establishing order to show cause process that's based on Benicar. They can look at that.

We drafted it that it covered the personal injury, plus the medical monitoring, plus the economic loss, but we can take those out, we're still discussing them. Also, there's a TPP one which is lagging behind. But we can certainly do it -- which should be entered, let's just get the personal injury one going, no reason to hold it up.

THE COURT: Is the personal injury start is -- is the medical monitoring and I forgot the other one --

MS. COHEN: Economic loss.

THE COURT: -- ready?

MS. COHEN: They're --

THE COURT: Is that ready?

MS. COHEN: They are -- we have some issues that we believe -- we sent some redlines to last night and we received plaintiffs' -- I think one of them at midnight last night and one at 9:00 this morning, so I've been trying to quickly look at their comments. We think you ruled on most of the issues. We're getting closer on those. We can address them with Your Honor.

But we do think that, you know, we're very eager on the defense side to get the process started, and why not just enter the first order and get the personal injury ones going. I think I probably speak for everyone on the defense side that -- that our clients are eager to get this going and there's no reason to wait.

THE COURT: Okay, I think you're right. So ordered, Mr. Slater. Let's get the ball rolling. So am I going to get the order by Friday?

MS. COHEN: Hopefully by this afternoon. I gave a hard copy to Mr. Slater, as well as an electronic copy. He can look at it and we can discuss it at lunch. We can make it so that it's just on personal injury, while we continue to talk about the other three.

THE COURT: No later than Friday, get me the order --

MS. COHEN: Okay.

THE COURT: -- and I hope it just mirrors exactly

Benicar. It worked beautifully in Benicar. All defendants' interests we're protected. They did a terrific job every week of preparing lists of, you know, who owes what and it just really worked beautifully so there's no reason to change it in this case so --

MS. COHEN: And I'm told -- I'm told it did mirror Benicar 1, you know, word-for-word, and I'm sure Mr. Slater will tell me if -- if my team misdirected me in any way. I'm sure they did not.

THE COURT: Okay. So we'll get -- the Court is going to get the agreed upon order, or at least a draft order with the parties' disagreements by Friday, we'll enter that and that will pertain to the bodily injury. What did we give the plaintiffs -- what, 60 days? I don't remember.

UNIDENTIFIED PLAINTIFF SPEAKER: 60 days I believe.

THE COURT: Okay, great. So what's the trigger, 60 days from the filing of the -- well, from the entry --

MS. COHEN: And --

THE COURT: -- of the order for future cases, filing of the complaint?

MS. COHEN: And I don't want to argue against my -- my own position of course, but I will say, I believe that what Your Honor ruled what we put in the order is that the plaintiffs had -- who already filed a short form complaint had 90 days from the entry of this order to complete the fact

sheet.

THE COURT: Okay.

MS. COHEN: So that's --

THE COURT: Fair enough.

MS. COHEN: -- just being candid, you know, and then --

THE COURT: And then from here on out --

MS. COHEN: -- in business that all other plaintiffs shall complete the fact sheet 60 days after filing the short form complaint.

THE COURT: That's for new complaints.

MS. COHEN: Yes.

THE COURT: Fair enough.

MR. SLATER: Adam Slater for plaintiff. Just -- Judge, just to talk about the fact sheets real quick, we're ready to argue the medical monitoring and the economic loss right now. There's no reason to hold them up.

THE COURT: No --

MR. SLATER: There's very few issues.

THE COURT: -- I intend to do that.

MR. SLATER: And then those should be able to be entered along with the -- the personal injury one. There's no reason not to because they should be able to be -- we'll have your rulings today so --

THE COURT: Okay.

MR. SLATER: -- and the TPP one is not this black box that nobody can see into. It's being reviewed. We're going to have comments back to them either by the end of tonight or tomorrow and it's -- you know, and then we're ready to go very quickly on that because it would seem to us that we should be trying to do these at about the same time.

THE COURT: Well, let's go through them and if it means the order is going to be entered on Monday rather than Friday, that doesn't make a material difference. But let's be clear, I was under the impression -- correct me if I'm wrong, with regard to the bodily injury fact sheets, the separate plaintiffs are going to fill them out. With regard to the medical monitoring, economic TPP, I thought just the named class representatives were going to answer.

MR. SLATER: Correct.

THE COURT: So there can't be that many people --

MR. SLATER: No, it's not.

THE COURT: -- right?

MS. COHEN: That's right, Your Honor, and again I'll just say in my own defense as we go through this if I'm a little slower than usual, we did just get the plaintiffs' redlines at midnight and 9:00 so I'm looking at it on my iPad with my notes so I'm just -- I may not be as fast like I normally am.

THE COURT: I haven't noticed. Which one should we

do first?

MS. COHEN: Probably the medical monitoring since that came, you know, ten hours ago as opposed to one hour ago.

THE COURT: I have it right in front of me.

MS. COHEN: Okay. So I -- I can comment on plaintiffs' redlines. I think that's the status. They -- they sent redlines to our version. We had sent you a version last night. They then sent you a redline. I'm now commenting on the redline and what I would say is we will agree to everything that they propose in redlines other than what I bring up affirmatively. Does that make sense? So basically I'll just comment on the ones to which we don't agree, and hopefully you can back me up on -- on this.

THE COURT: I have -- just so you know, I have -- I printed out what I was sent last night. I thought I just received from plaintiff this morning the plaintiff fact sheet. The copy that I have, at least the printout copy, doesn't have a -- it's not redlined so --

MR. SLATER: Whoever printed it might not have activated the "track changes" possibly.

THE COURT: Maybe. But I'm still prepared to go over all the issues with you.

MS. COHEN: We can go over it and then try to come to an agreement and then if one of us had missed something, obviously we'll not try to do a "gotcha" on the other person.

We'll -- you know, obviously work through it. But I think I -- I think I can walk through and identify the redlines that they propose on medical monitoring to which we cannot agree and then see what Your Honor thinks. To start with -- and I'm going to go to -- let's see, this would be in section I guess two, personal information and it's item (b), "other lawsuits."

THE COURT: Page five?

MS. COHEN: Yes, and that's the problem, my iPad doesn't show the page numbers, so I apologize for that. But let's see, they changed "Has plaintiff ever been a party to a medical monitoring lawsuit or made a legal" -- they took out the "made a legal claim of any type." Again, we believe here that -- that we are entitled to know all lawsuits, not just medical monitoring.

THE COURT: This -- didn't this issue come up in the other fact sheet?

MS. COHEN: It did in personal -- it did come up in personal injury.

THE COURT: And what did we decide?

MS. COHEN: And Your Honor said personal injury, but this legal -- this is medical monitoring, should at least cover medical monitoring and personal injury, no?

THE COURT: Right, that was going to be my suggestion -- Has plaintiff ever been a party to a lawsuit, that's very broad.

MS. COHEN: Hm-hmm.

THE COURT: But if it's limited to a claim where there's personal injuries or medical monitoring, I think that's appropriate.

MS. COHEN: Okay, so personal injury and or medical monitoring.

THE COURT: Okay.

MR. SLATER: That's fine, Your Honor. The only caveat I would have to that is these are people who are talking -- who are -- the class reps are bringing a case for potential future injuries, so whether they had a personal injury lawsuit in the past may not really be that important. I'm not going to argue against it too strongly. It's going to be more important in terms of a lot of the bulk in here.

THE COURT: I think it could be important for class certification issues because when the Court -- not me -- looks at typicality, if someone has some serious medical problem, that would increase the need for medical monitoring or something of that sort. I'm just making up a hypothetical, but I think it is -- it is relevant to class certification issues.

MR. SLATER: Yeah, I'm not going to over-argue that. I think when we get into the -- into the nitty-gritty on the medical conditions because that's going to be one of our real disputes, I think we might have to have a little more discussion about that because whether somebody is at high risk,

low risk, whatever, the monitoring protocols are going to be put in place for -- for everybody the same.

THE COURT: Okay, we'll deal with it but, you know, I'm -- when I was in practice I did a fair amount of class action medical monitoring work so I'm familiar with the -- with the case law and the requirements. But let's continue.

MS. COHEN: Okay. Do the ruling there is to have both personal injury and or medical monitoring?

THE COURT: Yes.

MS. COHEN: And then the next issue that I will look at related to the plaintiffs' redlines is it looks like at the bottom of page six under "employment history," or is it page -- I guess it goes into page seven, and have the issues with the -- so here, plaintiffs are deleting the broader language -- let's see --

MR. SLATER: I think it's that we added the refining language of that it's related to a cancer diagnosis.

MS. COHEN: Right, exactly.

MR. SLATER: So we --

MS. COHEN: Here again I think --

THE COURT: Help me here because I'm -- I have the -- we're at section (f) on page six.

MS. COHEN: Section (f) so basically we -- the way we had it, the plaintiffs have tried to restrict it just to related to a cancer diagnosis under (a) --

THE COURT: I don't -- I don't see that. It says, "Whether or not you are making a lost wage claim, please respond to all questions" -- am I in the right place?

MR. SLATER: No. Under -- it's the -- the first place you would look is section (1)(a) where it says, "Have you left this job for a medical reason in the past five years" -- we inserted, "relating to a cancer diagnosis in the past five years" so that we can focus on what the actual condition is that's at issue in the case.

And that's -- and every -- and things were -- this is not a personal injury case in the sense that somebody is claiming they were harmed and now you're going to look at alternative causes.

It doesn't matter if these people were working in a benzene factory for 40 years if they don't have cancer, they have a right -- they have a right to be monitored because whether it increases your risk and works concurrently with other potential causes as a contributing factor or whatever it may be, this is a case where who don't have cancer due to this --

THE COURT: I know but I'm not talking about what -- the ultimate relief. I'm thinking about class certification issues. Whether or not they worked in a benzene factory for ten years is relevant, I think --

MR. SLATER: Well, they're going to get that anyway.

They're going to know that.

THE COURT: -- for discovery purposes to class certification.

MR. SLATER: They will get that anyway. The employment history was not deleted from here.

THE COURT: Okay. So have them --

MR. SLATER: It -- it's just whether they left the -- whether they left that job for a health reason, we thought it made sense to limit it to due to cancer.

MS. COHEN: And we disagree with that, Your Honor. That's -- that's the issue. Also, just to make clear, I did skip over a similar issue in (d), the computer use. Again, apologies for that, but that was again the same issue where they made it -- instead of "regarding your health" -- this is on (d)(2) -- they put in there, "potential or confirmed cancer diagnosis."

So again, we think in this situation, that it should be broader and not just limited to cancer. It should be -- it should cover -- this is going back and I apologize, Your Honor, I'll try to get more --

THE COURT: See, I think one of the issues I'm grappling with is the copy I have doesn't have the additions you're talking about --

MS. COHEN: Yeah, that they --

THE COURT: -- so --

THE COURT: -- so just --

MS. COHEN: -- that the plaintiffs made. Do you have --

THE COURT: -- just tell me what --

MS. COHEN: Okay.

THE COURT: -- what the additions are.

MS. COHEN: So let me -- let me go back, let's go back to just do an order, if you don't mind, Your Honor, so (d), computer use, (one) and then (two), they've struck out in the (d)(2) where we had "regarding your health," and they added, "regarding potential or confirmed cancer diagnosis," so they --

THE COURT: No, leave it "health." Leave it "health."

MS. COHEN: And then --

THE COURT: It's discovery.

MS. COHEN: Yeah. Thank you. And then on -- then going on to the next one, I got screwed up there already, but on the employment history again under (f)(a) and (f)(1)(a) and (f)(2) as well as (2) where it says, "if yes," again plaintiffs have added for all of that "related to cancer diagnosis, identify" --

THE COURT: No, keep it as is. It's discovery, it's not burdensome, it's only five years, we're going to --

MS. COHEN: Okay. And this is going to be similar so we may be able to work this out quickly, page -- I believe it's page eight, but it's (h) --

MR. SLATER: Well, the next one is, "Have you ever" -- "Have you been out of work at any point for any condition for" -- it goes back even further I think so --

MS. COHEN: Which one are you on? I'm sorry --

MR. SLATER: -- the first one was limited to five years but section two --

MS. COHEN: Hm-hmm, I thought he ruled that that was going to be about in general, not just cancer, that's the same -- same issue there.

MR. SLATER: The first one was limited to five years. The second one was not limited to five years.

THE COURT: Why don't you limit subsection (2) to five years as well and keep it to health and not limited to just cancer.

MS. COHEN: Okay.

THE COURT: You'll depose these people and you could find out if there's anything else.

MS. COHEN: Okay. And then the same thing under --

THE COURT: How many medical monitoring class reps are there?

MR. SLATER: I might have to look again.

MS. COHEN: Yeah, I don't know offhand.

MR. SLATER: I think it's give or take about five.

UNIDENTIFIED SPEAKER: 11.

MR. SLATER: 11? That's why I said give or take. I don't have it in front of me, Judge. I just don't remember the exact number.

MS. COHEN: So we'll make that whole section consistent, cover more than just cancer, but make sure -- but limited to the five years --

THE COURT: Yes.

MS. COHEN: -- and that's how we'll handle that. And under the "military service," I think it's going to be a similar situation. Here we had -- as you can see under (g)(1) and (2), is related to your health and broad -- broadly, and the plaintiffs have tried to narrow it to just cancer, the same -- same --

THE COURT: Leave it to health.

MS. COHEN: Okay. Now on "worker's compensation" which is (h), it's going to be the same thing. We had -- let's see, we had it as, "Have you ever filed for worker's compensation related to a claim of occupational expose to a carcinogenic substance," and they changed and then offer, "Social Security and or State or Federal disability benefits for any reason," and they tried to narrow that to just cancer.

THE COURT: Instead of carcinogenic substance?

MR. SLATER: No, no, that's staying, that language,

because Your Honor ruled on that at the prior hearing. It's we wanted to in the -- in the personal injury version, the "Social Security and or State or Federal disability benefits" is not limited to any condition, we -- it's we didn't ask to limit it. Here we're trying to limit it to a cancer diagnosis.

MS. COHEN: And we would like it broader.

THE COURT: The broader -- we agreed for the personal injury, it's broader.

MS. COHEN: Yes.

THE COURT: Keep it consistent.

MS. COHEN: Thank you. And then the next -- the next one we had an issue with which is, I believe, page 12, but I need to find it on my iPad, and this is the "screening and diagnostics" part. "Screening and diagnostic," again, page 12 where it says, "procedures" -- are you there, Your Honor?

THE COURT: Yes.

MS. COHEN: Okay -- "procedures and or treatments" part.

MR. SLATER: Well, you skipped one. You skipped "life insurance." If I'm going to lose, I want to lose across the board.

MS. COHEN: Thank you, I appreciate that. If I had seen that --

MR. SLATER: It's section (I), Your Honor, it says "life insurance." "Within the last ten years, have you ever

been denied life insurance."

THE COURT: Well, let's make it consistent. You're going down, Mr. Slater, you might as well go down on everything.

MR. SLATER: A hundred percent, a hundred percent.

MS. COHEN: I appreciate --

THE COURT: So keep it as is.

MS. COHEN: I appreciate the support I'm getting. Thank you. Yes, "screening and diagnosis," now this is the next one on page 12 and this is a section which is not taken from the personal injury so this is somewhat new, and again, we're asking for the treatments and medical monitoring the class reps are undergoing as a result. And I guess here the plaintiff -- what we had here was, "Identify medical providers providing treatment based on" -- we had -- "your use of Valsartan" and, you know, and the different medications listed there. Plaintiffs want to change that to, "based on a potential or confirmed cancer diagnosis," so we would like to have that broader as we --

THE COURT: No, no, no, no, Valsartan. Keep it -- keep it as is.

MS. COHEN: Right, well we have -- oh, keep it as is. Okay.

THE COURT: Yes.

MS. COHEN: Okay.

THE COURT: I don't know why you just don't say any type of Valsartan, but it's up to you.

MS. COHEN: Okay.

THE COURT: I mean, do you think --

MS. COHEN: We can change that to have any --

THE COURT: No, I'm not suggesting what -- whatever you think is appropriate, but --

MS. COHEN: I think that's --

THE COURT: -- do you think --

MS. COHEN: I think that's a good change.

THE COURT: Do you think a patient is going to know the particular -- the type of Valsartan?

MS. COHEN: I think -- I think that's a great suggestion, we should change it to that. The plaintiffs are trying to make it just more narrow to cover just cancer diagnosis so --

THE COURT: No, you should know anything about Valsartan.

MS. COHEN: Okay. And then we go on to --

THE COURT: That's an easy one I think.

MS. COHEN: -- let's see, so pages 13 through 17, which is the "risk factor" section. This is --

MR. SLATER: What about the "medications prescribed" section? Let's just make sure we make a record. Right under what we just read, number one, received this under our

treatments. And then on "medications prescribed," this goes to medical diagnostic testing and screening procedures. They want everything for any condition for the last ten years, so our position was to limit it to the relevant medical condition.

THE COURT: Are we talking about (c)(1)(b)?

MR. SLATER: Yes.

MS. COHEN: Yes.

(Pause in proceedings)

THE COURT: They're going to get the records -- medical records, right?

MS. COHEN: And we can also maybe come up with a middle ground that is cancer and or any, you know, Valsartan treatment.

THE COURT: It -- it seems pretty broad given that you're going to get the medical records, and whatever is in the medical records would be responsive to this question, wouldn't it?

MS. COHEN: Yes, but what if we -- what if we again had a middle ground of and for any, you know, treatments for which the Valsartan was prescribed or taken.

THE COURT: Well, the answer would probably be no because they want medical monitoring, right? I mean, if it's limited to Valsartan it's plainly relevant, but I think as it's phrased, (c)(1)(b) is a little broad in this context because it's medical monitoring plaintiffs, but the -- the bigger issue

for me would be the response to this question would be in the medical records you're going to get.

MS. COHEN: Yeah. Again, how about please list the medical -- medications prescribed," and I think we're okay with the "with regard to a potential or confirmed cancer diagnosis," or the conditions for which, you know, you were taking Valsartan -- we added that additional phrase?

THE COURT: Any objection to that?

MR. SLATER: I just don't know what that would be. I mean, if someone had blood pressure -- that they got their blood pressure checked, I don't see how that really narrows this in the medical monitoring context.

MS. COHEN: That's what I was thinking off the cuff, something like that. We could --

THE COURT: Wouldn't that be in the medical records though?

MS. COHEN: It would be, Your Honor.

THE COURT: So why don't you make this as narrow as possible, just limit it to cancer --

MS. COHEN: Okay. And I think it's --

THE COURT: -- and then any -- any testing or screening for cancer.

MR. SLATER: And just like the 1961 New York Mets now, I have one win.

MS. COHEN: Well, I don't want to say this but I

think that's why I skipped over that one that we weren't actually fighting over. But I'll give you the win.

THE COURT: Throw him a bone --

MS. COHEN: I'll give him the win.

THE COURT: -- Ms. Cohen.

MR. SLATER: Just a couple bright spots just -- just to get through it, you know? Come on.

MS. COHEN: Page 13 on the "risk factors," this is -- you know, this is a large section, (d). This is obviously taken from your existing rulings that you've worked so hard on already, we've discussed -- this is I think we basically mirrored that and it came directly from the personal injury one which has been well argued.

THE COURT: These were all in the personal injury?

MS. COHEN: Yeah.

THE COURT: Coal industry was in the personal injury?

MS. COHEN: Yeah, this is -- this is how it came out, this -- this is how it was ruled, so we basically took this and I think plaintiffs, you know, deleted this whole section but we think it should mirror the personal injury one.

THE COURT: So what's the objection if it's in the personal injury?

MR. SLATER: Yeah, part of it is -- is burden and part of it is what does this then lead to in terms of the scope of what they're looking at in this -- in this case. I mean,

whether somebody worked in the coal industry, whether they worked in this courthouse, whether they were -- it doesn't matter because it's medical monitoring for people to determine when they're going to -- if they're going to get cancer so they have the support they need to get diagnosed --

THE COURT: I think it's relevant --

MR. SLATER: -- as quickly as possible.

THE COURT: -- to class certification, I really do because the typicality argument, the predominance argument. This is my opinion, I'm not deciding the motion, but in terms of whether or not medical monitoring is appropriate, I'm predicting one of the arguments defendant is going to make is that there is a predominance of individual issues and they have to look at the medical condition of each person and the exposure of each person and their medical history is relevant, et cetera, et cetera.

MR. SLATER: As long as we're not ruling today that that is actually an argument that would prevail --

THE COURT: No, of course not --

MR. SLATER: Okay.

THE COURT: -- because I'm not deciding the motion but --

MR. SLATER: Because we have serious issues with that --

THE COURT: -- for discovery purposes --

MR. SLATER: -- for obvious reasons.

THE COURT: -- I think it's relevant to class certification --

MS. COHEN: And it would --

THE COURT: -- so it stays in, especially since it was in the personal injury fact sheet.

MS. COHEN: Right, and we just mirrored that exactly so I think that should stay in here.

THE COURT: You slipped one by me, Ms. Cohen, because I didn't know the coal industry was in it, but if it's in it, keep it in.

MS. COHEN: I'm going to give Ms. Lockard credit for that.

MR. SLATER: No, we agreed to that actually. Isn't that one of the ones we agreed to --

MS. COHEN: Okay --

MR. SLATER: -- ultimately?

MS. COHEN: -- so we don't get that one.

MR. SLATER: We agreed to that, we agreed to glyphosate, we agreed to solar radiation, we agreed to perineal applied talcum powder --

THE COURT: That's right, and kryptonite too, right?

MR. SLATER: -- we agreed to all of the products that they apparently think cause cancer in all the other MDLs around the country, we agreed to all those that they inserted

themselves, for the record.

MS. COHEN: I have no comment. I'm only protecting my client in this case here. So let's see -- document -- I think -- I think the next section I believe is then we get to the --

MR. SLATER: I think we're on the document demands now.

MS. COHEN: Yeah.

MR. SLATER: Yeah, I think the -- the things that I was -- a lot of my redlines are probably going to be rejected now.

THE COURT: Page 19?

MS. COHEN: I think what about the -- let me just make sure on the "medication" section there, but that's -- I assume it would be -- remain in.

MR. SLATER: I think we took out documents reflecting the purchase price of replacement -- replacement medications,

MS. COHEN: You said -- you told --

MR. SLATER: -- because I wouldn't see how that would have any relevance to a medical monitoring claim.

MS. COHEN: Yeah, I just want to make sure on the -- on the section that the -- it looks like the plaintiffs also had scratched out page 17, I just want to make sure that is in, because that was important under medications one by Your Honor's ruling.

THE COURT: Yes.

MS. COHEN: Okay. So then we do get to the documents one and -- right, on the -- on the Roman Numeral (6)(a)(4)(a), they inserted “based on cancer diagnosis,” so I assume under your other rulings --

THE COURT: Make it consistent.

MS. COHEN: -- that should come out?

THE COURT: Yes.

MS. COHEN: And let’s see --

MR. SLATER: Yeah, I understand that to the extent that I -- that we redlined it that way, that Your Honor has ruled on those.

MS. COHEN: So all of those will just --

MR. SLATER: Anyone where I -- where we tried to limit it except for the one that -- our one win, we just want to hold on to that one win. We don’t want to be win-less.

MS. COHEN: And on (2) we’ll change to, you know, any and all Valsartan as opposed to the specific names where you redlined that. See that one, Adam?

MR. SLATER: I don’t know, which one are you on?

MS. COHEN: That is -- let’s see, (b) under “relevant document demands,” (b)(2), again, that’s just by his prior ruling, how we’re handling that.

MR. SLATER: Correct.

MS. COHEN: Okay.

MR. SLATER: Correct.

MS. COHEN: And the same with (3), and then I guess number (8) is really the one you were talking about which is the --

THE COURT: Purchase price is not relevant to medical monitoring, so take purchase price out.

MS. COHEN: And I guess just -- I'm looking at the notes here that I guess the -- the thought here was this medical monitoring plaintiffs are claiming an increased cost in medical care and that's part of their claim.

THE COURT: Take it out. It's not part of it, right.

MS. COHEN: So that -- I think with that we can get that turned around pretty quickly.

THE COURT: Let's see where we are after we get through all of them, and if it's feasible to agree on a reasonably quick date for all of them except the third-party payers, I think it makes sense --

MS. COHEN: To get the three of them.

THE COURT: -- but let's wait until we get through them.

MR. SLATER: There's one last thing and it's just in the -- the lead-in, the first sentence, you just have to add something in that it's to be completed by each plaintiff that's filed a medical monitoring class action lawsuit as a named plaintiff, we just have to -- I didn't see that last night.

MS. COHEN: Is that a -- you're just saying that now or it's in there -- it was in there --

MR. SLATER: It's not in there.

MS. COHEN: Okay, just -- if you send me the language, I'll put it in there and I think that -- that's fine.

MR. SLATER: So that takes us to the economic loss one and I think -- I think Mr. Stanoch is going to argue that for us, somebody who can count.

THE COURT: You don't have a high bar to do better than Mr. Slater.

MR. STANOCH: Thank you, Your Honor, I hope it's surpasses him.

MR. SLATER: Yeah, I know that's -- that's a loaded compliment or prediction.

MR. STANOCH: Your Honor, while Ms. Cohen is pulling up that one, I think if you have a copy, I think we can maybe start with part six which is the document demands and authorizations.

THE COURT: Page? Oh, it's not numbered but I have it.

MR. STANOCH: It's not numbered, Roman part six, document demands -- are you there, Judge?

THE COURT: Got it.

MR. STANOCH: And it's really about the authorizations and the authorizations, Your Honor, the

defendants are asking for healthcare authorizations, so for any healthcare provider with an economic loss case, an insurance record. And our position, Your Honor, is the only records relevant here in an economic loss case potentially are pharmacy records and insurance pharmacy records because the only injury here is economic -- did you buy their Valsartan, and what did you pay for it.

They don't need to know who -- who prescribed it, why, et cetera. In fact, this authorization is so invasive it doesn't even limit it to Valsartan.

It says "give me an author -- a blank authorization for any healthcare provider you have." So if they broke their leg ten years ago, if they went to a psychiatrist, I -- Your Honor, I think even the prescriber, it doesn't matter if it says I prescribed Valsartan. That's great. I don't have a claim unless I can show he received it or purchase records showing I paid money.

So we would ask, Your Honor, that the authorizations be limited to pharmacy record authorization and insurance pharmacy benefit records basically showing the insurer paid part of the price of the drug, and that the doctor requests be conformed the same way. For example, there's -- there's document request two, all medical records.

THE COURT: These are the individual plaintiffs who spent money out of pocket for Valsartan --

MR. STANOCH: Correct, Your Honor.

THE COURT: -- so for example, if they had a co-pay, they would pay the co-pay, or if they were uninsured, they would pay for the whole prescription.

MR. STANOCH: Correct, Your Honor.

THE COURT: Okay. So you want -- you want the underlying medical records?

UNIDENTIFIED SPEAKER: Yes, Your Honor, and the reason being it goes -- it goes to the issue of whether the plaintiffs received the benefit of their bargain. They're taking -- they were prescribed Valsartan presumably for a -- a health of cardiac condition. Did the medication work? Did it control their blood pressure? Did they have any heart issues while they were taking the medication?

It goes directly -- the claim is essentially in these economic loss cases that the plaintiffs -- what they received is worthless and so we need the medical records in order to evaluate whether or not the medication did what it was supposed to do, was it effective, and so it goes -- it goes to the core issue in the economic loss cases and so that's why we want authorizations for the medical records and that's the nature of the request.

THE COURT: The document request says "for each healthcare provider identified in this fact sheet," so there's a question that relates to what providers they have to

identify, what question is that. For example, if they went to see an orthopedist for a broken leg, you don't need that, right?

UNIDENTIFIED SPEAKER: I would tend to agree with that. I think at least -- at least for the fact sheet -- whether depositions lead elsewhere, but I think at least for the fact sheet what we're talking about is medical records relating to the conditions for which the patient was prescribed Valsartan or a Valsartan-containing medication.

THE COURT: So where in this question do they ask for the identity of providers?

UNIDENTIFIED SPEAKER: Your Honor, if I may, I was going to mention that. They don't, which is I think a drafting error and indicative of why this is overly broad.

THE COURT: Well, I have to agree with defendants on this one with regard to the treaters for the -- I'll call it high blood pressure because I read the -- the Third Circuit case and they talked about, you know, the issues that are relevant to whether or not there's standing/injury, and if I remember the decision right, whether the drug was effective or not was relevant to that consideration, so I think they made a valid argument.

At least for discovery purposes, they're entitled to know the treatment for the condition, i.e., high blood pressure. Now, they don't need to know about if their appendix

is taken out or they have a broken leg or something like that. But if they're seeing a GP who prescribes Valsartan or a heart doctor who prescribes Valsartan, I think that's relevant for discovery purposes. So I would say if you could limit -- limit it just to the condition for which Valsartan was prescribed, it's relevant for discovery purposes.

UNIDENTIFIED SPEAKER: And if there's -- and if there is a drafting error, and there very well may be, Your Honor, in terms of the predicate question of who prescribed Valsartan and what medical condition were you taking it for, and identify physicians and healthcare providers who have provided treatment for that condition, we can -- we can add that and then limit the authorization to those --

THE COURT: Yes --

UNIDENTIFIED SPEAKER: -- I think we're fine with that.

THE COURT: I think we're on the same page. We're not -- we don't need to know about their OB/GYN or things like that, whoever -- you know, whoever was --

MR. SLATER: It's there, by the way --

THE COURT: -- whoever was treating them.

MR. SLATER: -- section (4), it's section (4)(a) who prescribed medications for treatment of hypertension, so you have the list and the reason for the prescription, so that it checks back to that so that's covered. Yeah, if you accept our

redline which I think now it's based on that ruling, it would be treatment of hypertension.

UNIDENTIFIED SPEAKER: Roman numeral four.

MR. SLATER: Unless you -- or you want to limit it to Valsartan for the treatment of any condition so that it's anything that they were prescribed Valsartan for.

UNIDENTIFIED SPEAKER: I was helping out on this one issue so I'm not intimately familiar with the machinations of the back-and-forth on the fact sheets, but, you know, I'll simply say on the record, Your Honor, I think we're on the same page as far as the --

THE COURT: I do too.

UNIDENTIFIED SPEAKER: -- the scope of the authorizations --

THE COURT: I do too.

UNIDENTIFIED SPEAKER: -- it should be executed by the economic loss plaintiffs and we'll work to tailor the language to --

THE COURT: Right.

UNIDENTIFIED SPEAKER: -- to match that.

THE COURT: I think we know where we're going to wind up.

MS. COHEN: We'll also add patient numbers obviously because I think that's -- that's been an issue here, but I see that on page four, we'll just make that medications and

treaters on that part. I did find it here.

THE COURT: How many economic loss plaintiffs are there?

UNIDENTIFIED SPEAKER: Between 17 and 43 currently.

MS. COHEN: So that -- I guess looking at the -- and I don't know, Your Honor, if you received these, they came in this morning so I'm just looking at them.

THE COURT: Oh, are we -- is that the only issue on the economic loss?

MS. COHEN: No. No, Your Honor, that's -- so I'm now going back, he jumped to the document requests of course, I now have it pulled up from this morning.

THE COURT: Okay. Why don't we go in order.

MS. COHEN: They sent this at 8:59 so I don't know if you received it but --

UNIDENTIFIED SPEAKER: Well, Ms. Cohen, you cut me off in the email where I sent this to you last month so we're all at a disadvantage.

THE COURT: Let's just proceed with the fact sheet.

MS. COHEN: So let's see, I'm looking at their -- they added some language in the first paragraph and I think that's probably fine. They added something in the first paragraph and again, I don't know if you see that, Your Honor, but just some -- some (inaudible) language, I think that's probably fine. They have in -- let's see, the other lawsuits

again are under -- this would be other lawsuits that they're limiting it to class action lawsuits.

THE COURT: Let me see what page we're on --

MS. COHEN: Yeah.

THE COURT: -- or what section.

MS. COHEN: The section there that they redlined is --

UNIDENTIFIED SPEAKER: (2)(b).

MS. COHEN: Yeah, (2)(b) --

THE COURT: (2)(b).

MS. COHEN: -- we had, "Has plaintiff ever been a party to a lawsuit or made a legal claim." As you know, we've now talked about this in personal injury, we talked about this in the other one, and here they said has plaintiff ever been a named party --

THE COURT: No --

MS. COHEN: -- to class action --

THE COURT: -- why don't we make it consistent with the other ones.

MS. COHEN: Okay, personal injury or -- or medical monitoring -- personal -- personal injury and or economic loss?

THE COURT: And you can add as a -- or as a class representative, I think that's relevant, whether they were a class representative in another case. If it's not there, you could add that to the other one. That's -- I think that's

clearly relevant to --

MR. SLATER: No objection.

MS. COHEN: Yes.

THE COURT: -- to whether the named plaintiff is appropriate.

MS. COHEN: And then -- let's see, their next -- the next change comes under "claim information." This would be part three. They have a comment on the side. Our question is under hypertension relevant history, when were you first diagnosed, if discontinued how did you manage -- their comment is, "We request a proffer by the defendants why this is pertinent in an economic loss case."

THE COURT: When were you first diagnosed with hypertension?

UNIDENTIFIED SPEAKER: And Your Honor might have gotten at this already in terms of the authorizations. Our position, Your Honor, is you purchased the drug, you purchased the drug, we're trying to get the money back. If I purchased a dishwasher and it cleaned bowls but not the dishes, it doesn't matter. If I purchased the drug Valsartan for hypertension or if I used it for some other condition, it doesn't matter.

MS. COHEN: It's the same argument that -- that was argued, I think it goes to whether it worked for (inaudible).

THE COURT: Keep it in. It's so --

MS. COHEN: Your Honor, next -- I think their next --

again, their next comment now goes -- it's very similar. Under "for medications," same thing, they're asking for a proffer. So it seems like that should just go on the -- the same as Your Honor -- should stay in?

THE COURT: Let's just make it consistent.

UNIDENTIFIED SPEAKER: Well, Your Honor, I think with this one, you said it with the document request, this should be about the medical condition for which the Valsartan was prescribed. Because as written, this is telling me all prescription medications you took for treatment of medical conditions in the last ten years so if you got Valsartan for hypertension, tell me other drugs you took for hypertension I think is what your --

MR. SLATER: This is the one that he already ruled on.

THE COURT: Let's -- okay hold on, let's take -- let's see where we are. We're on medications, part four, right?

MR. SLATER: This is what you ruled on before when we said we agreed that we had an understanding of what you wanted. That was the question that I was referring back to and I think Ms. Cohen said she understood and we were on the same page.

MS. COHEN: Yes, and but there was another aspect of -- of I think the -- the redlines we got this morning were they said we request a proffer so I'm just responding to that saying

I think we've addressed that already and this should stay in with the change in terms of how we're describing the condition.

UNIDENTIFIED SPEAKER: Agreed.

THE COURT: Okay, and as long as it's consistent.

MS. COHEN: Agreed with everyone?

UNIDENTIFIED SPEAKER: Yes.

MR. SLATER: We agree with your hypothetical language.

MS. COHEN: And I think that that probably covers it. I think with those rulings, I think we know how to revise it.

THE COURT: Okay. So I think it makes sense since one is finalized, the personal injury. And these two, it's just a matter of wordsmithing it. What -- pick a date when it's reasonable to submit these three concurrently to the Court with an order. I mean, if it's -- if it's Monday or Tuesday I don't care. A day or two isn't going to make a difference, but I think it makes so much sense to if we can put three of these in the same order rather than one, for an extra day or two, it's -- for consistency purposes, it's worth it. So you tell me the date when these three can be submitted to the Court with an order.

MS. COHEN: I think we can get these turned around and get them to plaintiffs, you know, by Friday, and we're waiting for their comments on the order.

THE COURT: So how about Tuesday?

MS. COHEN: Yeah.

THE COURT: Okay, Tuesday is the --

MS. COHEN: 1st.

THE COURT: Tuesday is October 1, right?

MS. COHEN: Yes.

THE COURT: Okay. So we'll say October 1 to get the --

MR. SLATER: Judge, Monday is going to be a tough day because it's -- Monday and Tuesday, just because it's the holiday I think, right?

THE COURT: Okay, Wednesday then -- Jewish holiday, I don't want to interfere with that so Wednesday, October 2nd, we're going to get the final economic loss plaintiff fact sheet, medical monitoring class plaintiff fact sheet, and plaintiff fact sheet for individual personal injury cases. I guess the title of the economic loss plaintiffs fact sheet should include economic loss class plaintiffs fact sheet.

UNIDENTIFIED SPEAKER: Consumer class plaintiff, Judge.

THE COURT: Yes. And then we'll get that on Wednesday. If it's not entered on Wednesday, it will be entered on Thursday and I think that's terrific, we'll be consistent with those three.

MR. SLATER: And I can update, Your Honor, TPP one, I'm told by our TPP experts in the room that there's maybe one

new issue that we hadn't seen before. It looks very -- if we can get a meet and confer with the defense by the end of the week --

THE COURT: Terrific.

MR. SLATER: -- we think we should be able to -- if you can tell us who the people are and we'll have our group, we should be able to probably knock that out.

UNIDENTIFIED DEFENSE SPEAKER: Exactly.

THE COURT: Okay, great. Do you want to go over this today or do you want to just let you meet and confer on it?

MS. COHEN: I think meet and confer because we have not seen any of their redlines yet --

THE COURT: Fine.

MS. COHEN: -- so I also think it would be helpful if you could maybe send us your redlines before we get on the call.

MR. SLATER: Absolutely.

THE COURT: So, Ms. Cohen, let's point towards the next phone call to get it finalized and then that will be great.

MS. COHEN: Thank you, Your Honor.

THE COURT: How many third-party payer class plaintiffs are there?

MS. COHEN: Well, I think there were two lawsuits, right?

MR. SLATER: Correct, there's two.

THE COURT: Okay, so we're through the first item on the agenda. The second item is defendant fact sheets.

UNIDENTIFIED DEFENSE COUNSEL: Your Honor, we provided those to plaintiffs last week and we haven't heard back on the comments to those so we'll work through them with the comments.

THE COURT: Plaintiffs, can we hear from you on that?

MR. SLATER: We'll get back to them. I would say before the end of the week we'll have our redline. If not by tomorrow, it will be by Friday.

THE COURT: Okay. Well, the ball is in your court. The sooner you get your comments to them, the sooner the Court can address any disputes and get it entered. At the end of the day when the fact sheet is done, who is going to answer them? Which class of defendants, if not everyone?

UNIDENTIFIED SPEAKER: Your Honor, we -- consistent with how discovery has been going to this point, we have provided defendant fact sheets for the API manufacturers and the finished dose manufacturers.

THE COURT: Well remember, we only directed the core discovery to those two lead defendants. Now, I don't know if plaintiffs want fact sheets directed to the other defendants.

UNIDENTIFIED SPEAKER: Your Honor, at this point, just if I may just on that issue, the discovery requests that

we have, the document requests, they're also only directed at the API and finished dose manufacturers. If we're going to have a peripheral defendants dismissal which -- which is now finalized as to the repackagers and had other I think -- some of the pharmacy --

THE COURT: After that's done.

UNIDENTIFIED SPEAKER: Yeah.

THE COURT: Okay, let's assume we work that out, the order is entered, peripheral defendants are dismissed without prejudice. Who is left in the case?

UNIDENTIFIED SPEAKER: The API manufacturers, finished dose manufacturers and large retail -- what they have referred to as "major pharmacies."

THE COURT: Okay. So from the -- directed to the plaintiffs, the fact sheets you're currently working on are directed to the two sets of defendants, but that doesn't -- that's a subset of all the defendants who will be left in the case. Do you want to direct fact sheets to the other defendants?

MR. SLATER: We do. There's large retailers and there's actually some distributors as well that are large distributors so we're going to want to have them answer as well.

THE COURT: All right. So would that be a separate fact sheet?

MR. SLATER: We intend to put it on one and then it would just say you answer the parts that apply to you.

MR. GOLDBERG: Your Honor, we already -- we already dealt with that issue --

THE COURT: No, no, no, no, no, Mr. Goldberg, let's -- let's cut this short. Core discovery was only directed to the two sets of defendants. There was never a ruling that discovery directed to the other defendants who remained in the case was off limits.

MR. GOLDBERG: Oh, I agree.

THE COURT: Okay.

MR. GOLDBERG: No, no, what I meant was the -- the defendant fact sheet was first proposed by plaintiffs in June, and it was one document that had 20 or 30 questions and didn't delineate as to the supply chain. In August, Your Honor ruled that no, there needs to be a different fact sheet for each level of the supply chain --

THE COURT: Or at least a different section.

MR. GOLDBERG: Correct, right, one that -- that broke it out, which is what we did. So we sent it back to them with API and finished dose, we did not include other levels of the supply chain because when we met with Your Honor in August, it seemed clear to us at a minimum that discovery as to retailers was somewhere down the line because their information was not pertinent to this point in time in the litigation.

THE COURT: Mr. Slater, why don't we do this. From the plaintiffs' perspective, clearly the most important discovery is the two sets of defendants. Get that finalized, get that to the Court, I'll enter the order and contemporaneously work on a separate fact sheet for the distributors --

MR. SLATER: It's --

THE COURT: -- repackers who are left in the case.

MR. SLATER: Yeah, we can -- it won't really be workable. I mean, what we -- what I think would be better, they -- they sent -- what they basically did was they deleted -- they just redlined out giant chunks of it and then reorganized it the way they wanted it to look. We have their input but we -- but honestly, Judge, it's going to make sense for all of the different defendants to be --

THE COURT: All right --

MR. SLATER: -- responding to one --

THE COURT: -- I'll defer to you, but --

MR. SLATER: It's not going to be --

THE COURT: -- so they're going to be included, Mr. -- Mr. Goldberg. They're not all -- the Court never intended that all discovery would be off limits to the other classes of defendants. We only agreed initially to direct core discovery to the two "target" sets of defendants.

MR. GOLDBERG: I understand, Your Honor, I -- I just

think it's -- consistent with where we are today, we've got 122 document requests focused at the API and finished dose manufacturers who are working on a custodian list with respect to those levels of the supply chains and that -- that -- we just thought that was the Court's intent, was to have the retailer portion of this which really goes to prescriptions, be at a later point in time.

THE COURT: I asked them if they want separate or one, they said one. I know that's going to delay things, but that's more a problem for the plaintiffs than the defendants, right? So the -- if that's what the plaintiffs want to do, let's do it that way, okay? All right, so the ball is in the plaintiffs' court on that one.

UNIDENTIFIED SPEAKER: Your Honor, if I can -- if I can describe the purpose of plaintiffs' fact sheet, set the factual basis for it to understand why we need them all in one document.

The idea of the defendants' fact sheet is it's the response to plaintiff fact sheet which is for each individual case. In order to understand the story of the defendants' fact sheet for that specific client, we have to ask the pharmacies involved because the pharmacies are the only people often times, our understanding, the people who have the lot and batch number dating back -- far backwards, they have to provide that information. Also on the defendants' fact sheet, we need to be

able to understand the whole picture from API manufacturers on down to pharmacies and John Smith actually received each of those pills.

That's where we're going to need the people in the chain to be responding, so that we can understand for John Smith, what -- what are the various issues. And the APIs hold the information on a lot of those issues, but they can't respond individually to that client unless they see the batch and lot number response on that information.

That's why we're asking for the documents. There's also a history of the solvent being examined and issues with the solvent, right, even before you get to the API manufacturers. In order to be able to understand that information, we've got to know the lot and batch numbers connected on up to the solvent issue.

THE COURT: Would the two sets of main defendants have the lot and batch number?

MR. GOLDBERG: They were -- I do not believe they are going to know John Smith's lot and batch number.

THE COURT: No, but they'll identify the lot and batch numbers that either are contaminated or may be contaminated?

MR. SLATER: Yes.

MR. GOLDBERG: Yes.

THE COURT: Yes. And then with that information, the

pharmacies or distributors would be able to follow the chain, right?

UNIDENTIFIED SPEAKER: (Inaudible).

THE COURT: So doesn't that caution in favor of separate fact sheets because -- okay, hypothetically, if it's one fact sheet due in 90 or 60 days, the distributors are going to say I can't answer this question until I have the lot and batch number, that's what they can assert.

But if we do the lead defendants first and a couple of weeks later finalize the repackagers, wouldn't -- by the time they have the duty to answer, won't they have the lot and batch numbers from their answers?

UNIDENTIFIED SPEAKER: No, because it's backwards, they need to start with the pharmacies in order to address the information that they know on the contamination of those individual pills --

THE COURT: Okay.

UNIDENTIFIED SPEAKER: -- so it would go pharmacy first on back.

MR. SLATER: Also, it would be served at the same time. They would have to communicate with one another before they serve the response because it would be served in a particular case so all the information would be there so they could interact prior to serving them.

THE COURT: How many -- no one has answered this

question, how many pills or drugs are in a "lot," because I -- the FDA has recalled a lot or a batch. How many are in a lot or a batch?

UNIDENTIFIED PLAINTIFF COUNSEL: The only thing that I have heard and that's -- that's a case where we have limited information. I can see the FDA recall and I can see that there's some lots that say 1,000 pills, but I don't know that it's always 1,000 pills in the lot.

THE COURT: Do you know, defendants, how many are in a lot?

UNIDENTIFIED DEFENSE COUNSEL: I don't know, Your Honor.

UNIDENTIFIED DEFENSE COUNSEL: The FDA actually defines what is a batch and what is a lot, but they are loose definitions as I -- a batch is essentially a defined segment of a -- of a product unit that can be traced to a given time of manufacturing lot to be part of what is essentially part of a batch.

Those definitions as I said are rather loose and vague, and I think -- at least this is just my personal understanding, Your Honor, is that what -- what constitutes a batch may differ from manufacturer to manufacturer in terms of size and quantity and so forth. I don't think there's any accepted industry standard or FDA regulation that governs that's going to say a batch is 1,000 pills or 10,000 pills. I

think it differs from manufacturer to manufacturer based on their practice. That's my personal understanding. But I tend to think it's correct.

MR. SLATER: That's why we have this issue on the agenda, so it makes sense to talk about it now, that whatever the descriptors are that the defendants used, whether it's lots, batches, packages, groups -- whatever they call them, we've asked for definitive "lot and batch information" are going back to the beginning of every contaminated or potentially contaminated -- whatever they want to call them.

And right up -- because there's going to be a lot of batches -- I'm going to call them lots or batches, I don't know what they are either -- that were contaminated because they were used up so they're going to need to go back and they're going to need to roll their sleeves up so that as you see, even though counsel has no idea, everybody and the Court are going to need to have a foundational knowledge base so that anybody can look at what lot or batch or whatever you want to call it -- ND -- NDC (phonetic) codes, all this and triangulate all this.

And okay, this plaintiff falls into this and that's -- and we know that's a contaminated batch or that's disputed or that's clearly not contaminated, whatever it is so we know where everybody sits, and there has to be something where there's just absolutely no room for ambiguity.

I think it's a very important foundational issue that it -- it touches on a bunch of things. And -- and the other thing it touches on as

-- as you hear that the language is an issue, part of it we need is these meet and confers and we'll get to that. But this ties into that as well because terminology is so important.

THE COURT: The issue about the lot and batch, isn't that covered in the fact sheets?

MR. SLATER: Well it is, but we've used terminology that we're familiar with, but part of what we're going to need to do is have a candid conversation and say how is this described internally, what is it -- how is it referred to, et cetera, for so many reasons, for search terms, et cetera. Okay, I just wanted to make sure I -- I flagged it.

UNIDENTIFIED SPEAKER: Your Honor, one thing I just want to get clarity -- produce a lot and batch information is one thing. What -- what I -- in terms of the timing, the plaintiff fact sheet is required and plaintiffs are required to identify to the extent they can --

THE COURT: Yes.

UNIDENTIFIED SPEAKER: -- in their C codes lots and batches which are on their bottle. And the defense fact sheet asked us to identify the lot and batch as to a specific patient, which -- which it ties back to the plaintiff fact sheet.

MR. SLATER: And my response to that would be (a), this is the time to get defendant information of everything, of the universe of the pills that these manufacturers manufactured overseas and allowed to be contaminated and sold under very disturbing circumstances.

Other plaintiffs are going to file cases six months, a year, whatever -- we're not going to then go back and they're going to keep extending their lot and batch matrix every time a plaintiff files, number one.

Number two, we have class actions so it covers everything, so the entire playing field is -- is at issue in our class actions anyway, so that's our response to that.

UNIDENTIFIED SPEAKER: Well, and the other part is there's a breakdown of the individual plaintiff. Not every plaintiff has, you know, 150 pill bottles. They'll have maybe the last four or five pill bottles at best. We're talking about plaintiffs who have had emanated history we think all the way back to 2012.

THE COURT: I'm not quite sure what we're arguing about.

UNIDENTIFIED SPEAKER: The lot and batch number.

THE COURT: It's unquestionably relevant to identify what lot and batches were or may have been contaminated.

UNIDENTIFIED SPEAKER: Right.

THE COURT: It's -- that identification is not going

to just be limited to the specific lot and batches that plaintiffs identify. There can't be an issue about that. I mean, it's basic.

UNIDENTIFIED DEFENSE COUNSEL: It is, Your Honor, and you made the point that I was about to make and either I'm not sure what the argument is or we're certainly way ahead of ourselves as far as the ball being in the plaintiffs' court on getting back to us on the defendants' fact sheet.

But the reality of it is -- and I just want to make this point clear, the lot and batch information that the plaintiffs keep asking for, it's in with the hundreds, thousands of pages of documents that were produced in core discovery. I know with respect to my clients, they wanted to take a look.

If the information has been provided, it is in FDA correspondence outlining what lots and batches were found to have impurities at levels that the FDA now deems unacceptable. It's there, they have it.

The problem that they're getting into is an issue of product identification that they have as far as their burden of proof that we're not going to be able to ultimately supply to them. That's a reality. We can tell them -- we can tell them what batches we made, when we made it and who we sold it to.

THE COURT: Right.

UNIDENTIFIED DEFENSE COUNSEL: But we're not going to

be able to tell them that this particular plaintiff used that.

THE COURT: I can't --

UNIDENTIFIED DEFENSE COUNSEL: That's their job.

THE COURT: I can't believe there's a dispute about that.

UNIDENTIFIED DEFENSE COUNSEL: I can't believe there is either --

THE COURT: I don't think --

UNIDENTIFIED DEFENSE COUNSEL: -- and it sounds like that's what I'm hearing.

THE COURT: -- there is a dispute. I don't think that's what they're arguing.

UNIDENTIFIED DEFENSE COUNSEL: That's what I'm hearing.

THE COURT: I think what they're arguing is the only lot and batches that the defendants are going to identify are those the plaintiff specifically identify, and I said no, Rule 26 discovery, we're going to -- they're entitled to take discovery to identify every lot and batch that was contaminated or may have been contaminated, and it's somebody's job to prove that the particular plaintiff took one of -- a pill from one of those batches.

(Transcriber change)

UNIDENTIFIED DEFENSE COUNSEL: We are on the same page, Your Honor. And what I'm adding to that --

THE COURT: So I don't think the plaintiffs dispute that.

UNIDENTIFIED DEFENSE COUNSEL: And what I'm adding to that is they already have much of that information.

THE COURT: Well, we'll see. We'll see. I mean we're just -- I mean, I don't know what's in the core discovery, but everyone seems to think this manufacturing -- not everyone -- people -- some people think that some manufacturing change led to this contamination.

For discovery purposes, I don't even know if plaintiffs have scratched the surface on that issue yet. When did it happen? Where did it happen? How long did it go on? Et cetera, et cetera. I assume that's going to be a gigantic part of discovery on the case. Right? Wouldn't you think so?

UNIDENTIFIED DEFENSE COUNSEL: It could very well be.

THE COURT: I don't think there's a doubt about that. That's what -- that's the core of the case.

UNIDENTIFIED DEFENSE COUNSEL: Just to clarify on the issue of why -- where this came up. I think it just -- it's an overhang from the first iteration of the defendant fact sheet, which put on the defendants identifying the specific lot and batch that a plaintiff took based on the plaintiff fact sheet, and I think we're all clear that that's not something defendants can use.

UNIDENTIFIED PLAINTIFF COUNSEL: To address that, I

disagree with that wholeheartedly. Defendants have an obligation. Each defending pharmacies have an obligation to issue recall letters to our client.

THE COURT: He's talking about his client.

UNIDENTIFIED COUNSEL: His client. But that's why we have to have the pharmacy names though.

THE COURT: Right. I mean a factory in China --

UNIDENTIFIED COUNSEL: Yes.

THE COURT: -- can't tell you if your client took a particular drug from X batch.

UNIDENTIFIED COUNSEL: I agree.

THE COURT: But maybe one of the pharmacies can.

UNIDENTIFIED COUNSEL: Yes.

THE COURT: Okay. So I think where we left this is, the ball is in plaintiff's court on defendant fact sheets. That plaintiff have chosen to submit one fact sheet that's going to be answered by all the remaining defendants in the case. And the sooner we meet and confer with the plaintiffs about that, the sooner it will be finalized and entered. And their duty go respond will be triggered.

I would like to see that sooner rather than later, so we could get the case off the ground. But the ball is in your court. And I assume you want to do the same thing. So, hopefully, if we don't get this resolved by the phone call in two weeks, let's set a target for absolutely finalizing it for

the next in-person meeting.

UNIDENTIFIED PLAINTIFF COUNSEL: And, Judge, just one logistical issue on this that I don't want to get lost here. What I'm talking about in terms of definitive foundational -- excuse me -- definitive foundational lot and batch information is not a fact sheet issue, it's a -- it's a macro production that the defendants need to make are separate and apart from the DFS, from our perspective.

THE COURT: We're going to get to that issue today.

UNIDENTIFIED PLAINTIFF COUNSEL: Okay.

THE COURT: We're going to get to that issue this morning. Okay. Defendant fact sheet, I think we have a game plan going forward. I'm going down the agenda. Dismissal of peripheral defendants.

It sounds like you're working on it and the order's going to be submitted to the Court.

So --

MS. GOLDENBERG: Yes, Your Honor I believe it's done. We should have it to you very shortly.

THE COURT: Okay.

MS. GOLDENBERG: Marlene Goldenberg. I'm sorry, Your Honor.

THE COURT: Okay. So whenever you get it done, just get it to me and it will be entered, and I congratulate the parties for -- for helping the Court streamline the case so we

can get to the crux of it.

All right. Search terms and custodians. Okay. Let me just give you the Court's perspective on this. This is, if not the most important issue for discovery purposes, definitely up there. Okay? We have given -- the Court has given the parties a lot of leeway on this issue. We've targeted December 11 I think to resolve all discovery disputes, all search terms and custodian issues. That date is locked in stone.

That date will not be extended, because the longer we wait to finalize the search terms and conditions, the longer this discovery process is going to drag out. So whatever you have to do to get the disputes teed up before the December 11, do it. And if it's not, we'll -- whatever the record is at that point we're going to enter.

I don't want to take wind out of your sails, Mr. Slater and Mr. Goldberg, the Court, if the parties won't do it voluntarily, the Court is going to order the defendants to meet informally with the plaintiffs.

We did it in Benicar. It was a tremendous, tremendous time and cost savings. This is in the defendants' best interest. The alternative is to take 30(b)(6) depositions and drag out the case, and drag out people, and spend a lot of money.

And that does no one any good. So if you don't -- if the defendants don't agree to it, we're going to order

individual meetings with all the defendants to meet informally off the record, 408, however you want to privilege this information, so that you can give plaintiffs the information they need to meaningfully define their search terms and custodians.

That is in the defendants best interests. And Judge Kugler and I are in lock-step on this issue, you're going to hear it from him this afternoon. It's the best way to get this case going, Mr. Goldberg.

MR. GOLDBERG: Your Honor --

THE COURT: I don't mean to take wind out of your sails.

MR. GOLDBERG: Respect the Court's -- I respect the Court's view. The question really is is -- at what point in time does that need to happen? I mean, if we can resolve these issues, shouldn't we have the chance before we burden individuals --

THE COURT: No.

MR. GOLDBERG: -- before we incur costs? Are plaintiffs going to have to share those costs? Because you're talking about witnesses potentially in China, India, all over the globe. And why should we jump to that without even having met and conferred one time? We --

THE COURT: Mr. Goldberg, here's the reason. Because the plaintiffs don't have enough information to make a

meaningful submission to you of search terms and custodians to you. That's why they have to submit 443 terms to you, because they don't have enough information to set the parameters of what they want.

MR. GOLDBERG: I -- I think we understood the defendants have already incurred extensive costs to produce 200,000 pages of documents, all of which was provided to the FDA. So the Federal Drug -- Food and Drug Administration can conduct its investigation. All of the key witnesses are in those documents. That was the point.

All of the people who have been communicating with the FDA on this issue, all of the people involved in the recall, in identifying the contamination, in testing it are in those documents.

If plaintiffs spent the time reviewing those documents, maybe -- maybe they realize that the custodian list we provided is sufficient, maybe they have a few additional names. But that was the purpose of the core discovery, not to sub -- we could have done this months ago then and saved the cost.

But, Your Honor, the suggestion --

THE COURT: Mr. Goldberg, time out. The Court's order is going to provide that if you don't -- I'm telling you, so we can cut this discussion short. If the defendants won't agree to do it voluntarily, the Court is going to order it.

The alternative is 30(b)(6) depositions, and discovery disputes, and fights, and spending money that we -- and time that we don't need to.

This is in the defendants' best interest.

MR. GOLDBERG: The question really is the timing. Are we going to have the opportunity to spend some time trying to do this the way every other case in Federal Court is done, with meet and confers, because this process is not in the Rules, the process that is being proposed.

That we do something that's proposed under the Rules, which is meet and confer, determine if we can find some common ground. Determine where we can't find common ground, and have -- if there are going to be interviews or those issues.

But there should be a period to try and work through some of these issues, otherwise you are absolutely changing the way practice is done in every MDL. Because this will be the standard. We're going to just go right to the formal interviews, which are not under the Rules.

Cut to the chase, plaintiffs can do whatever they want. And the 443 search terms is not because they're not sophisticated lawyers who can't figure it out. It's because they want to have the broadest possible discovery. That search term list will only grow if they meet with people.

So the -- the -- if the Court is absolutely decided on this issue, it should at least provide the parties an

opportunity to resolve these issues, so you're not burdening individual witnesses who are scattered around the globe on these issues.

And do it between now and December 11th.

THE COURT: Mr. Goldberg, with due respect, I think you're naive if you think that the plaintiffs aren't going to review the documents that have already been produced. And I think you're naive if you think there's not going to be meet and confer sessions before you meet in person with a representative of your client who's knowledgeable about these issues.

I can tell you from ex -- yes, maybe they don't do this in other cases, maybe. But I know that having been in prac -- having been in your shoes hundreds of times, hundreds when I was in practice, I know how to do things, and we know how things work.

We did this in Benicar. It saved an enormous, enormous amount of time and money. Now this is a little bit harder case, because we're not dealing with one or two defendants, admittedly. But we -- it allows -- as I see it, the plaintiffs are talking to you with one hand behind their back.

They don't know answers to basic questions. Well maybe they do, but I'm not aware of it. Where were these factories? How many different factories were they? When did -

- people can't even tell how many pills are in a lot or in a batch. This is basic information that, instead of them taking a deposition, they could sit down in my jury room across the table, informally, privileged, confidential and get this information.

Isn't that a much easier way to do things then to go through this whole rigamarole of dispute letters, and orders, and opinions, and 30(b)(6) depositions?

MR. GOLDBERG: Absolutely it may be, but it's the question of timing, because you're doing this -- what's the purpose of the 122 document requests? We're going to produce all this information. At the same time you're going to interview witnesses about the information? It's duplicative. It's redundant. And the timing is not the right timing.

Because they can get all of that -- and they've requested all the information you have -- you just identified.

THE COURT: Okay. Let's move on. So according to my chronology, the first draft of the search terms and the custodians was produced on what, September 16? And then the deadline to exchange comments is October 15, that's what I have down.

UNIDENTIFIED PLAINTIFF COUNSEL: There is just one tweak to that. We -- plaintiffs served our search terms per the order of September 16. The defendants have an extension. They served their custodian lists Monday night, the

twenty-third, at night.

THE COURT: And then I have -- well October 15 or thereabouts the parties will have exchanged comments about custodian, search terms, and document requests. Right?

So then you have until October 15th, until a couple of days before December 11 to meet and confer, hopefully meet with knowledgeable people and try and work this out. And whatever you can't work out, gets presented to the Court to be resolved on December 11th or thereabouts.

That's what the plan is. Okay? The terms of the order whether you meet -- it makes sense to meet and confer before you have these personal meetings, but undoubtedly they're going to be necessary to give plaintiffs the information they need to narrow and focus their document requests.

And I say it, I'll say it again, this is all in the defendants' interest. Because when we get to December 11, and plaintiffs have all the information they need to focus their document requests, and if they don't do it, it's going to be denied. But if they come to Court on December 11 and say, well, we don't have the basic information we need, Judge, that's why we have to give these broad requests, because their people won't sit down with us, that argument may carry some weight.

Okay. So that takes care of four and five on the

agenda. Number six requests for definitive log batch information. Have we covered that?

UNIDENTIFIED PLAINTIFF COUNSEL: I believe so, Your Honor.

THE COURT: Okay. Number seven, FDA updates. Plaintiff said they haven't received any. Defendants say they produced it. So is there a dispute here?

MR. PAREKH: Your Honor, Behram Parekh on behalf of plaintiff. So we have a question as to whether or not they're actually producing everything, and that question arises because, for example, on the FDA's website is a FOIA request that was made by Duane Morris, we're assuming on behalf of their client.

That actual FOIA request has never been produced to us. So we don't know -- I mean, we don't know what they're actually communicating, but this is just one example where we can tell that there's a document that's missing.

It also looks like the FDA continues to have recalls, continues to have communications. Those communications aren't being produced to us, and we're assuming that the FDA is not just doing this, you know, blindly without talking to defendants.

Can we tell exactly what's missing? No. But the fact that we've gotten so little seems to indicate that they're not complying with the seven-day requirement for producing

communications.

THE COURT: Anyone want to state from defendants' perspective as to this?

MR. GOLDBERG: Your Honor, I mean, I think we provided our statement in the letter, we are producing the information if it was a FOIA request and it didn't come from a party. But the communications, we've provided letters to plaintiffs on July 1st, 2019, August 23rd, 2019, August 28th, 2019.

The defendants are very clear about their obligation, and are working to satisfy the obligation. There's no indication, other than an assumption. But of course that's -- that's part of -- that's part of the issue here is, you know, we're under an obligation, you know defendant is going to flout Your Honor's order. And the information has been provided.

THE COURT: Does anyone know offhand in what order the FDA issue was memorialized? I want to take a look at that order.

(Pause)

MR. GOLDBERG: Perhaps document number 88 is what -- document number 88 was the Court's core discovery order.

THE COURT: Okay. I've got it. Thank you, Mr. Goldberg. Seven days after it sends to the FDA or receive the FDA -- from the FDA a communication, the responding defendants shall serve plaintiffs with a copy of the responsive

communication.

It's questionable whether a FOIA request is responsive. I'm not saying it is or it isn't. But it's not entirely clear that a FOIA request is within the scope of the Court's order. I can tell you that that wasn't the intent of the order to deal with FOIA requests.

The intent of the order was to deal with the recall. So if Duane Morris or attorneys send letters to the FDA regarding the recall, that has to be produced. Or the company itself presumably sends letters, emails, that has to be produced. I don't think it was the contemplation of the Court to include FOIA's in that order, although there is an order earlier in the case where I think the Court ordered plaintiffs to produce to defendants documents obtained from a FOIA.

At the time I suppose we didn't think of putting the same obligation on the defendants.

MR. PAREKH: So we have to put that in the order from today's conference.

THE COURT: I think that makes sense.

UNIDENTIFIED PLAINTIFF COUNSEL: Your Honor --

MR. GOLDBERG: And, Your Honor, I would just ask that the order be reciprocal in the sense that we certainly have an obligation as the Court's ordered to supplement FDA correspondence in seven days from receipt.

And that the plaintiffs are to have an obligation

within seven days of receipt of documents in response to a FOIA request, to supplement whatever they receive from the Government.

THE COURT: Oh, no question. It's all right there -- that order is already in place. Plaintiffs have been ordered to produce responses to FOIA.

MR. GOLDBERG: Right. And I think they produced what they had at that time. I'm only saying that if they received information since then, within seven days of receipt, just that we have the obligation, plaintiffs should have a similar obligation.

MR. PAREKH: Your Honor, we agree, and we have -- and we have actually supplemented the one FOIA response that we've received. So we have been doing that. I -- I understand that whether or not the FOIA request -- the FOIA request was sent to the FDA. So it's a communication from Duane Morris to the FDA.

But I understand that there's a question as to whether or not that really falls. But another indication is you know the recent Aurbindo and Lantech warning letters that went out from the FDA. We don't have those, we don't a response to those.

THE COURT: What I'm going to do is, I'm going to put in the order I'm just going to remind the parties of their obligations. I'm getting representations from the defendants that they did it -- I'm reminding the defendants that they have

an obligation to do it.

I assume very competent counsel we have in this case, right after this conference is going to go back to their client to make sure they have everything. And I wouldn't be surprised in the next few days if you get a supplement.

That's really the best I can do. We have to rely on -- on extremely competent counsel to do what they're supposed to do. And unless someone proves me wrong, that's what I'm going to continue to do. So that will take care of the FDA issue.

Number eight, request for informal meetings. I've talked about that. I hope the Court doesn't have to order it. But if they don't occur, the Court's going to order it. And like I said, Judge Kugler and I discuss this in detail and we're in lock-step on this issue. And no one is going to convince us otherwise that it's not in the best interest of the defendants that this occur.

Number nine, Hetero and Aurobindo. I continue to hope that Hetero and Aurobindo change their positions. I think we're being distracted by these 30(b)(6) depositions. But, unfortunately, they're necessary. But if that's the position they take that they're not going to produce documents from overseas, we have to find out if there's a duty to produce it.

So I understand the schedule. But I continue to hope that that issue is eventually going to be moot. The loose

scheduling of October, November and December conferences, why don't we hold that for when we're together with Judge Kugler. I understand you have your mass tort conference. It looks like a lot of you are going to be there, well but more on the plaintiffs' side. It sounds like you're going to fly solo, Ms. Cohen, at that conference.

I didn't see a whole lot of defense counsel at that conference.

MS. COHEN: Yeah, I'm trying to represent the -- the defense team.

THE COURT: Right. But I really don't see a big problem with rescheduling. And why don't we deal with that this afternoon with Judge Kugler. And the JPL motion to expand the MDL, we'll just have to wait to see what happens. I saw there was another Losartan recall yesterday, and I just don't know how it's not going to be part of this case, but we'll see.

Okay. That's the agenda items. Is there anything else we think we need to address before we adjourn until 2:00?

UNIDENTIFIED PLAINTIFF COUNSEL: Just to come back to the corporate rep deps on that possession, control, custody issue. In the event that the defendants don't decide to just provide the information and move forward, I think that it would be helpful, Your Honor, if we know that we're going to get the names of who's going to be produced and schedule those depositions like in the next few days to week, because

otherwise if we wait until the meet and confer advances, we'll be in mid to late October, with a deadline of November 8th to take depositions.

THE COURT: Anyone want to speak for the two companies that are at issue?

MS. POLETTO: Janet Poletto from McKeon and Poletto, Your Honor, for Hetero USA. I am learning probably today or tomorrow whether or not Hetero USA will be in a position to produce the documents from India. They may have a communication line in place now. I can confirm that. Once I know that I will let Adam know one way or the other. And then we can talk about if it's delayed, we can't do it, where to go from there.

MR. SLATER: Fair enough. Thank you.

THE COURT: And --

MS. HEINZ: Good afternoon, Your Honor. This is Jessica Heinz for Aurolife. Good morning, I guess. We have no problem with letting them know in a couple of weeks who will be designating, that’s fine with us. I think that takes us to the same date that we agreed to produce our objections.

THE COURT: Okay. Why don't we say in two weeks the two parties will identify who the deponent or deponents are, and the parties have to provide a firm date for the deposition. And if they can't agree on a date, the Court will reluctantly set it itself. But I don't want to do that.

And I continue to hope, because I think it's in your clients' best interest, to avoid these depositions so we can get -- we're talking about core discovery, one way or the other it's going to have to be produced at some time. Why not just produce it and avoid this discovery?

MS. POLETTO: We understand, Your Honor.

THE COURT: But if your client wants to fight it, it's fine.

MS. POLETTO: I will let you guys know if anything changes.

THE COURT: Thank you very much, Counsel.

UNIDENTIFIED PLAINTIFF COUNSEL: Your Honor, at the risk of inflaming a touchy subject, but because you've made it so clear the importance of December 11th as the date for all of us. Might there be a suggestion that since all counsel are here, everyone owns a cell phone. That we at least put some number of dates in the hopper?

THE COURT: We'll adjourn right now and you can stay here as long as you want and agree on it. I think that's a great idea to schedule things 30, 60, 90 days ahead, because then you know it will get done.

UNIDENTIFIED PLAINTIFF COUNSEL: Right.

THE COURT: Everyone's on notice, but that's -- that's going to be an important date, because, let's face it, substantively between -- substantively between August and

December, what's happening in the case?

Not a whole lot. You're working on -- we're working on the background documents, we're working on the fact sheets. We're working on search terms. No discovery's being produced, no depositions are being taken. That's why I think December is such an important date.

Because we've got to get the case off the ground. Okay? But stay here. I think it's a great idea. Lock in the dates, and if you want them memorialized in the Court order I'm happy to do that.

UNIDENTIFIED PLAINTIFF COUNSEL: Thank you.

THE COURT: Okay. So for the good of the order, any other issues? Judge Kugler's not going to be in the best mood this afternoon. Eagles lost, Phillies lost a double-header. That's why I'm in such a good mood.

We're adjourned. I'll see you 2:00 in Judge Kugler's courtroom.

THE CLERK: All rise.

(Proceedings concluded at 11:39 a.m.)

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C E R T I F I C A T I O N

We, Diane Gallagher and Josette Jones, court approved transcribers, certify that the foregoing is a correct transcript from the official digital audio recording of the proceedings in the above-entitled matter.

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